

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KIMBERLY PARKER, as Administratrix of the
Estate of CHARLES JOSEPH PARKER, JR.,
Deceased, and on her own behalf,

No. 22-cv-09302 (NSR)(JCM)

Plaintiffs,

**CONFIDENTIALITY
STIPULATION AND ORDER**

-against-

CITY OF PORT JERVIS, JESSE CLUNE,
ANDREW HANIUK, DANIEL MIGLIONICO,
MATHEW J. BISLAND, and ROBERT J. KATZ,

Defendants.
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WHEREAS, on May 15, 2023, plaintiff served notice of a judicial subpoena *duces tecum* upon the Orange County District Attorney's Office, seeking documents and records relating to an internal investigation that Office conducted into the events at issue in the above-captioned matter (the "Responsive Documents"); and

WHEREAS, through Executive Assistant District Attorney Andrew Kass, the Orange County District Attorney's Office has represented that the requested records that are within its possession are presently sealed under Section 160.50 of the New York Criminal Procedure Law and that, upon issuance of a court order directing the unsealing and production of the Responsive Documents solely for use in the litigation of the above-captioned matter, it has no objection to producing same; and

WHEREAS, by Stipulation So-Ordered on June 20, 2023 by the Hon. Judith C. McCarthy, U.S.M.J., counsel for the respective parties in the above captioned proceeding agreed to, and the Court Ordered, the unsealing and production of Responsive Documents by the Orange County District Attorneys' Office to the herein parties to be used solely for the purpose of litigating the

above-captioned matter and, that the Responsive Documents be considered Confidential subject to a separate Confidentiality Agreement between the parties;

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the respective parties to the above-captioned proceeding, that the following procedures shall govern the production, exchange, and subsequent handling of the Responsive Materials produced by or obtained from the Orange County District Attorney's office in response to the judicial subpoena *duces tecum* during the discovery proceedings in the above-referenced action.

1. The Responsive Materials shall be designated and deemed to be "Confidential", and shall be so marked prior to the time copies are furnished to any other party requesting or otherwise entitled to receive the materials, except where the requesting party agrees to accept such designation after the Responsive Materials have been produced.

2. The Responsive Materials shall be used only for the prosecution and/or defense of this action, and under no circumstances, other than those specifically provided for in this Confidentiality Stipulation and Order or in subsequent stipulations and/or Court Orders, shall the contents or materials be disclosed by any party, except as provided for in paragraphs 3, 4, and 5 below.

3. The Responsive Materials, or the information or content thereof, that is produced may only be disclosed to the following individuals:

- a. Counsel of record to the parties to this Confidentiality Stipulation and Order and employees of such counsel's firm actively assisting in the conduct of this action;
- b. The parties to this Confidentiality Stipulation and Order;
- c. Any person who is a party, or who in good faith believes he is a potential fact witness, or who the party has retained as an expert witness, or any person who is deposed in the context of this proceeding;

- d. The parties' attorneys who are not parties to this Confidentiality Stipulation and Order, expert witnesses not yet retained but under obligation to hold all information in confidence, consultants, any persons otherwise retained to provide specialized advice to the parties in this action and/or the support staff or vendors employed or retained by such persons;
 - e. Persons with whom the parties communicate during discovery and/or in preparation of and/or discussion with any potential party and non-party witness and/or their counsel and/or individuals/entities which may lead to the discovery of relevant information and/or potential witnesses (including for example, current and former employees);
 - f. Any referee, special master, and/or mediator, arbitrator, neutral and/or other person engaged or appointed to facilitate alternative dispute resolution; and
 - g. Employees of any outside firm retained to photocopy or reproduce the Responsive Materials for use in accordance with this Stipulation and Order.
4. The Responsive Materials may be shown to the persons described in paragraphs 3(a)-(g) solely upon the following terms and conditions:
- a. Before disclosure is made to the persons described in paragraphs 3(a)-(g), such person must be provided with a copy of this Confidentiality Stipulation and Order and shall execute the Certificate annexed hereto as Exhibit A. No use of said Certificate(s) shall be made by the producing party except to enforce this Confidentiality Stipulation and Order.
5. The Responsive Materials may be disclosed to persons other than those described in paragraph 3, solely upon the following terms and conditions:
- a. If the party requesting further disclosure to persons not otherwise identified in this Stipulation and Order (i) obtains written consent from opposing party; (ii) if the opposing party refuses to give consent, obtains an Order from the Court following consultation with the attorneys for all parties, which Order directs further disclosure; and
 - b. Before any disclosure is made, the person or party to whom disclosure of the Responsive Materials is sought must be provided with a copy of this Confidentiality Stipulation and Order and must certify in writing that the person understands and is bound by this Confidentiality Stipulation and Order and that he or she may not republish the Responsive Materials to any third party; and
 - c. Before any disclosure is made, a copy of the Certificate executed pursuant to paragraph 4(a) is provided to the opposing party.

6. Unless otherwise ordered by the Court, in the event that counsel for any party determines to file in or submit to this Court any Responsive Materials or information derived therefrom, or any papers containing such material or information, such documents shall be provided to the Court in a secure manner, such as by an encrypted email attachment or submitted in a sealed envelope. No matter the manner in which the documents are provided, a statement substantially in the following form shall be endorsed:

CONFIDENTIAL

This email/envelope contains documents that have been filed under seal pursuant to a Confidentiality Stipulation and Order and access is strictly limited to the Court.

7. All such materials so filed shall be maintained by the Clerk of the Court separate from the public records in this action and shall be released only upon Order of this Court.

8. The Confidentiality Stipulation and Order has no effect on, and its scope shall not extend to, any party's use of the party's own confidential information or information fully obtained from third parties outside of discovery proceedings in these actions, even if the same or similar materials are produced during discovery.

9. The Responsive Materials shall be treated as Confidential for the duration of this litigation and thereafter. Until this Court enters an Order changing the designation, the Responsive Materials shall be treated as Confidential in accordance with this Confidentiality Stipulation and Order.

10. Nothing contained in this Confidentiality Stipulation and Order, nor any action taken in compliance with it, shall operate as an admission by any party that any particular document is admissible in support of or in opposition to any motion or at the trial of this action.

11. The Responsive Documents may be offered into evidence in open court at the trial of this action subject to the Federal Rules of Evidence and the controlling judicial precedent, unless a further order of protection is issued by this Court.

12. After the entry of a final judgment in this action, any parties in possession of Responsive Materials shall destroy said documents, and submit an affirmation within thirty (30) days attesting to the destruction of the Responsive Materials, except that counsel for all parties may maintain with their office files an archival copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, and attorney work product, even if such materials contain Confidential materials that are the subject of this order and, in such case, any such Confidential materials retained which such archival copies shall remain subject to this Confidentiality Stipulation and Order.

13. This agreement does not otherwise subrogate any existing laws which govern the confidentiality of records which may be produced, exchanged and/or obtained during the pendency of this action.

Dated: June 30, 2023

SUSSMAN & GOLDMAN
Attorneys for Plaintiff

By: 

Jonathan R. Goldman
1 Railroad Avenue, Ste. 3
P.O. Box 1005
Goshen, New York 10924
(845) 294-3991 [Tel]
(845) 294-1623 [Fax]
jgoldman@sussman.law

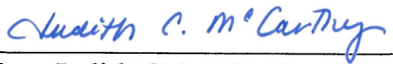
Dated: June 30, 2023

SCHWAB & GASPARINI, LLP
Attorneys for Defendants

By: *Michael Del Vecchio*

Michael Del Vecchio
222 Bloomingdale Road, Suite 200
White Plains, New York 10605
(914) 304-4353 [Tel]
(914) 304-4378 [Fax]
mdelvecchio@schwabgasparini.com

SO ORDERED.



Hon. Judith C. McCarthy, U.S.M.J.

Dated: June 30, 2023

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KIMBERLY PARKER, as Administratrix of the
Estate of CHARLES JOSEPH PARKER, JR.,
Deceased, and on her own behalf,

No. 22-cv-09302 (NSR)(JCM)

Plaintiffs,

**NON-DISCLOSURE
CERTIFICATE**

-against-

CITY OF PORT JERVIS, JESSE CLUNE,
ANDREW HANIUK, DANIEL MIGLIONICO,
MATHEW J. BISLAND, and ROBERT J. KATZ,

Defendants.
-----X

I, _____, acknowledge that I have read and understand the Confidentiality Stipulation and Order in this action governing the non-disclosure of those materials that have been designated Confidential. I agree that I will not disclose such Confidential materials to anyone other than for purposes of this litigation. By acknowledging these obligations under the Confidentiality Stipulation and Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for purposes of any issue or dispute arising hereunder and that my willful violation of any term of the Confidentiality Stipulation and Order could subject me to punishment for contempt of Court.

Signature

Printed Name

Date